

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ALVARO CIMENTAL-AYALA,

Plaintiff,

v.

CITIGROUP, INC. & GOVERNMENT
NATIONAL MORTGAGE ASSOCIATION
(GINNIE MAE),

Defendant.

Case No. 2:13-cv-01073-MMD-GWF

ORDER

(Def's Motion to Set Aside Entry of Default
– dkt. no. 13; Def's Motion to Dismiss –
dkt. no. 14)

I. SUMMARY

Before the Court are Defendant Government National Mortgage Association's ("Ginnie Mae") Motion to Set Aside Entry of Default (dkt. no. 13), and Defendant CitiMortgage, Inc.'s ("CitiMortgage")¹ Motion to Dismiss (dkt. no. 14). For the reasons set out below, the motions are granted.

II. BACKGROUND

Plaintiff Alvaro Cimental-Ayala filed the Complaint in District Court in Clark County and Ginnie Mae removed to this Court. (Dkt. no. 1.) Plaintiff is proceeding *pro se*. Prior to removal, the state court entered default as to Ginnie Mae and CitiMortgage. On August 19, 2013, the Court dismissed Ginnie Mae from this action at Plaintiff's request and set aside default as to CitiMortgage because service was not properly effectuated. (Dkt. no. 12.)

¹CitiMortgage is erroneously identified as Citigroup, Inc. in the Complaint. (Dkt. no. 14 at 1.)

1 The allegations in the Complaint are difficult to parse. The Complaint alleges that
2 Plaintiff entered into a mortgage with iMortgage Funding Corp. and that the mortgage
3 loan was secured by a Deed of Trust. The Complaint also alleges that CitiMortgage
4 became beneficiary of the Deed of Trust. CitiMortgage states that it appointed Northwest
5 Trustee Services as Trustee. (Dkt. no. 14 at 3.) According to CitiMortgage, Plaintiff failed
6 to make mortgage payments and Northwest Trustee Services initiated a foreclosure
7 sale. (*Id.*) The Complaint does not identify a legal theory under which it seeks relief, but
8 states that “[j]urisdiction arises under Nevada and Federal statutes for intentional
9 misrepresentation and negligent misrepresentation.” (Dkt. no. 1, Ex.1 at ¶3.)

10 CitiMortgage now moves to dismiss the Complaint under Fed. R. Civ. P. 12(b)(6).
11 Ginnie Mae moves to set aside default.

12 **III. DISCUSSION**

13 **A. Ginnie Mae’s Motion to Set Aside Entry of Default**

14 Defendant Ginnie Mae filed a Motion to Set Aside Default pursuant to Fed. R. Civ.
15 P. 55(c). (Dkt. no. 13.) Rule 55(c) provides that a court may set aside a default for “good
16 cause shown.” The good cause analysis considers three factors: (1) whether Ginnie Mae
17 engaged in culpable conduct that led to the default; (2) whether Ginnie Mae had a
18 meritorious defense; or (3) whether reopening the default judgment would prejudice
19 Plaintiff. See *Franchise Holding II, LLC v. Huntington Rest. Grp., Inc.*, 375 F.3d 922,
20 925–26 (9th Cir. 2004) (citation omitted). These factors are disjunctive and the Court is
21 free to deny the motion if any of the three factors are true. *Id.* at 926.

22 The Court finds that good cause exists to grant Ginnie Mae’s motion. Ginnie Mae
23 did not engage in culpable conduct leading to the default because service was not
24 properly effectuated. Ginnie Mae has also set forth facts that, if true, would constitute a
25 meritorious defense, such as sovereign immunity, Plaintiff’s failure to exhaust
26 administrative remedies and insufficient service of process. Lastly, the Court finds that
27 Plaintiff will not be prejudiced by setting aside the default as Plaintiff has voluntarily
28 dismissed Ginnie Mae from this action and has failed to respond to its motion.

1 **B. CitiMortgage's Motion to Dismiss**

2 **1. Legal Standard**

3 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
4 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide
5 "a short and plain statement of the claim showing that the pleader is entitled to relief."
6 Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While
7 Rule 8 does not require detailed factual allegations, it demands more than "labels and
8 conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v.*
9 *Iqbal*, 556 US 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).
10 "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550
11 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient
12 factual matter to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at
13 678 (internal citation omitted).

14 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to
15 apply when considering motions to dismiss. First, a district court must accept as true all
16 well-pled factual allegations in the complaint; however, legal conclusions are not entitled
17 to the assumption of truth. *Iqbal*, 556 U.S. at 679. Mere recitals of the elements of a
18 cause of action, supported only by conclusory statements, do not suffice. *Id.* at 678.
19 Second, a district court must consider whether the factual allegations in the complaint
20 allege a plausible claim for relief. *Id.* at 679. A claim is facially plausible when the
21 plaintiff's complaint alleges facts that allow a court to draw a reasonable inference that
22 the defendant is liable for the alleged misconduct. *Id.* at 678. Where the complaint does
23 not permit the court to infer more than the mere possibility of misconduct, the complaint
24 has "alleged—but not shown—that the pleader is entitled to relief." *Id.* at 679 (internal
25 quotation marks omitted). When the claims in a complaint have not crossed the line from
26 conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570. A
27 complaint must contain either direct or inferential allegations concerning "all the material
28 elements necessary to sustain recovery under some viable legal theory." *Twombly*, 550

1 U.S. at 562 (*quoting Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir.
2 1989) (emphasis in original)).

3 Allegations in *pro se* complaints are held to less stringent standards than formal
4 pleadings drafted by lawyers, and must be liberally construed. *See Hughes v. Rowe*, 449
5 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972) (*per curiam*); *see also*
6 *Hamilton v. Brown*, 630 F.3d 889, 893 (9th Cir.2011); *Balistreri v. Pacifica Police Dep't*,
7 901 F.2d 696, 699 (9th Cir.1990).

8 **2. Analysis**

9 CitiMortgage argues that the Complaint should be dismissed because it is
10 “incomprehensible” and because it does not “identify particular causes of action, specific
11 claims, or the required elements thereof, leaving [CitiMortgage] to guess as to the
12 specific type of misconduct the Plaintiff alleges.” (Dkt. no. 14 at 5.) Plaintiff argues that
13 the Complaint does provide CitiMortgage “fair notice of the charges” and “the grounds
14 therefore.” (Dkt. no. 14.) The Court finds that the Complaint fails to state a claim upon
15 which relief can be granted.

16 The Court has reviewed the record, the Complaint and Plaintiff’s summary of her
17 claim in her opposition but is unable to understand the alleged misconduct or draw a
18 reasonable inference that CitiMortgage is liable. The Complaint alleges that CitiMortgage
19 “knowingly misrepresented actual ownership of deed of trust in effort to execute
20 collateral” and that Plaintiff “had a justified reliance on truthfulness of ownership and
21 proper assignments which was misrepresented by [CitiMortgage’s] account of ownership
22 beneficiary through endorsement, assignments, and Notice of Defaults.” (Dkt. no. 1, Ex.
23 1 at ¶¶3-4.) From this language, it appears as though Plaintiff alleges misrepresentation
24 by CitiMortgage, but the Complaint is not clear as to what the alleged misrepresentation
25 is or how it caused injury to Plaintiff.

26 Plaintiffs’ complaint is so deficient that the Court cannot ascertain the causes of
27 action or the facts upon which they rely. The Complaint does not give fair notice of the
28 claims or factual allegations to allow CitiMortgage to answer or defend itself. Plaintiff’s

1 opposition does not clarify the issue. It states that Plaintiff can prove CitiMortgage's
2 misrepresentation and summarizes aspects of Plaintiff's claim, but it does not articulate
3 the alleged misrepresentation in a manner that the Court can understand. At best, the
4 Complaint offers legal conclusions not afforded the assumption of truth and avers to
5 misconduct without identifying what the misconduct actually may have been.
6 Accordingly, Plaintiff has failed to state a claim upon which relief can be granted and the
7 Complaint is dismissed.


8 The Court has discretion to grant leave to amend and should freely do so "when
9 justice so requires." *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990)
10 (quoting Fed. R. Civ. P. 15(a)). As Plaintiff is proceeding *pro se*, the Complaint has not
11 been previously amended, and the Court cannot conclude that amendment would be
12 futile, the Court grants leave to amend the Complaint.

13 **IV. CONCLUSION**

14 It is therefore ordered that Ginnie Mae's Motion to Set Aside Entry of Default (dkt.
15 no. 13) is granted.

16 It is further ordered that CitiMortgage's Motion to Dismiss (dkt. no. 14) is granted.
17 Plaintiff may file an Amended Complaint within thirty (30) days of this order to cure the
18 deficiencies of her Complaint. Failure to file an amended complaint within thirty (30) days
19 shall result in dismissal of this action with prejudice.

20 DATED THIS 27th day of January 2014.

21 
22 _____
23 MIRANDA M. DU
24 UNITED STATES DISTRICT JUDGE
25
26
27
28